

FILED

2008 JUL 22 AM 10:11

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:  DEPUTY

BONITA P. MARTINEZ, ESQ., SBN 153346
2918 FIFTH AVENUE SUITE 204
SAN DIEGO, CA 92103
619-291-8166
FAX# 619-291-8167

ATTORNEY FOR PLAINTIFF,
DELIA V. OPINION

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

DELIA V. OPINION,
PLAINTIFF,

VS.

DONALD C. WINTER, SECRETARY OF
THE NAVY; UNITED STATES NAVY &
MARINE CORPS; SUSAN OTTOBRE,
BONITA DAVID, MARK BURHART;
JACK FLANAGAN; MICHAEL THOMAS,
RUBEN QUINONEZ, REMY SONGCO,
ZENAIDA KASPICK, SANDBERG &
SIKORSKI, MARIFI SZUMONSKI,
LIGAYA DAVIS AND DOES 1
THROUGH 10, INCLUSIVE,

DEFENDANTS.

) CASE NO.: 08 cv 0944 BEN NLS
) FIRST AMENDED COMPLAINT FOR
) DISCRIMINATION IN EMPLOYMENT:
) 1. AGE DISCRIMINATION
) 2. NATIONAL ORIGIN
) DISCRIMINATION
) 3. DEFAMATION CONTINUING
) 4. FRAUD CONTINUING: INTENTIONAL
) MISREPRESENTATION/CONCEALMENT
) 5. CONSPIRACY WITH INTENT TO
) DEFRAUD

I
INTRODUCTORY ALLEGATIONS

1. This is a complaint by a former employee against her ex-
employer for damages arising out of an unlawful suspension from
her employment for an alleged fraud; discrimination based on age
and national origin. Plaintiff seeks compensatory damages. This
Court has jurisdiction under Age Discrimination in Employment
Act of 1967, as amended 29 U.S.C. Section 621 et seq. (ADEA);

Complaint for Discrimination -

VIA FAX

1 The ADEA prohibits employment discrimination against 40 years of
 2 age or older, section 623 (1); Title
 3 VII of the Civil Rights Act of 1964, as amended by the Civil
 4 Rights Act of 1991, 42 U.S.C. §§2000e, et seq. (Title VII), and
 5 42 U.S.C. §§ 1981, et seq.; Section 703 (a)(1) of the Civil
 6 Rights Act of 1964, 42 U.S.C. 2000e-3(a)(1) and the Federal
 7 Torts Claims Act Title 28 U.S.C. §267(a) Plaintiff, Delia V.
 8 Opinion, filed an Administrative Claim with Equal Employment
 9 Opportunity Commission on or about February 1, 2006. This case
 10 has been under an intensive investigation and cooperative
 11 discovery with the EEOC no decision was rendered.

12 2. Defendant Donald C. Winters, is Secretary of Navy, and
 13 Defendant Navy/Marine Corps(Agency) is an Agency of the United
 14 States Government respectively.

15 3. Plaintiff, Delia V. OPINION, hereinafter referred to as
 16 (Plaintiff) was a federal employee worked as an Operations
 17 Assistant for the Marine Corps Community Services(MCX/MCCS)
 18 aboard Marine Corps Air Station (MCASD) Miramar, San Diego,
 19 California. On or about December 20, 2005 she was suspended from
 20 her employment indefinitely, and coerced to retire by fear and
 21 intimidation of being charged with fraud; unlawfully accused of
 22 misconduct (fraudulently making an unauthorized purchase of a
 23 diamond ring). The unlawful accusations, and coercion of
 24 retirement/resignation was approved and promoted by upper
 25 management defendants, in addition to Sales Associates Marifi
 26 Szumonski(Ms.Szumonski) and Ligaya Davis(Ms. Davis).

27 4. At all relevant times herein, Plaintiff, age 53 at that
 28

1 time, was a resident of the State of California and was
2 employed by the United States Navy and Marine Corps as a an
3 Operations Assistant for the MCX/MCCS.

4 5. Defendant Marifi Szumowski (Ms. Szumonski) was a senior
5 Sales Associate for MCX/MCCS, age 36. Defendant, Ms. Davis, age
6 40 hereinafter Ms. Davis was an employee of the MCX/MCCS, and
7 was the Sales Associate who sold Plaintiff a diamond cluster
8 ring on consignment with MXC. At all times herein mentioned Ms.
9 Szumonski and Ms. Davis were residents in the county of San
10 Diego, California.

11 6. Defendant, Bonnie David (Ms. David) was the MCX/MCCS Human
12 Resource Director; was residents in the County of San Diego,
13 California. At all times herein mentioned Ms. David was a
14 resident in the County of San Diego, California.

15 7. On December 19, 2005, Archara Bowen, drafted the Notice of
16 suspension; and was present during the questioning of the Sales
17 Associate, Ligaya Davis. Ms. Bowen was a Human Resource
18 Specialist, told Plaintiff that she should retire and work
19 somewhere else. At all times herein mentioned, Ms. Bowen was a
20 resident in the County of San Diego, California.

21 8. Defendant Susan Ottobre at all times herein mentioned Ms.
22 Ottobre was a resident in the County of San Diego, California.

23 9. Glo Emde and Terry White continued to process Plaintiff
24 retirement papers, even though she had called to request that
25 she wanted to withdraw her papers.

26 10. Glo Emde (Ms. Emde) was a MCX/MCCS Human Resource Director.
27 On December 22, 2005 Plaintiff talked with Ms. Emde because she
28

1 had been told to talk to her by Ms. Bowen regarding the
2 retirement which Ms. Bowen had suggested. Plaintiff talked to
3 Ms. Emde and Ms. Emde told her to do what Ms. Bowen had
4 suggested, that is, retire.

5 12. Defendant Jack Flanagan (Mr. Flanagan) was the MCX/MCCS
6 Operations Director, signed the Notice of Suspension. At all
7 times herein mentioned, Mr. Flanagan was a resident in the
8 County of San Diego, California.

9 13. Defendant Michael Thomas (Mr. Thomas), was the Loss
10 Prevention Director for the MCX/MCCS. Mr. Thomas, who had been
11 extremely rude and hostile to Plaintiff grabbed paperwork out of
12 her hands, without asking for it during an interview. Mr. Thomas
13 had stated to Plaintiff she was suspended indefinitely and sent
14 Plaintiff home escorted by Glo Emde, Mr. Quinonez and Mr.
15 Thomas. Mr Thomas fabricated, falsified and participated in the
16 conspiracy to obtain false statements and allegations from
17 witnesses. At all times herein mentioned Mr. Thomas was a
18 resident in the County of San Diego, California.

19 14. Defendant Mark Burhart was the Retail Store Director, On
20 December 21, 2005, When Plaintiff called Mr. Burhart he refused
21 to speak to her, because he said he did not have the report and
22 the investigation was ongoing. At all times herein mentioned Ms.
23 Mr. Burhart was a resident in the County of San Diego,
24 California.

25 15. Defendant Remy Songco (Ms. Songco) was the MCX/MCCS retail
26 Operations Manager, age 50, was the supervisor of Plaintiff. At
27 all times herein mentioned, all of these Defendants were
28

1 employees of the MCX/MCCS. At all times herein mentioned, Ms.
2 Songco was a resident in the County of San Diego, California.

3 16. Defendant Sandberg & Sikorski (S&S), whose business entity
4 is unknown was doing business and was licensed to do business
5 as a vendor of jewelry at the MCX/MCCS in the County of San
6 Diego.

7 17. Defendant Zenaida Kaspick is a vendor representative for
8 S&S, a fine jewelry concessionaire that operates within the
9 Exchange. Ms. Kaspick, employee for (S&S), managed the business
10 operations in the sale of S&S jewelry at the MCX/MCCS. At all
11 times herein mentioned Ms. Kaspick was a resident in the County
12 of San Diego, California.

13 18. Ms. Theresa Hanrahan (Hanrahan, deceased) managed the
14 Jewelry Department. She (Hanrahan) and Ms. Kaspick provided
15 false information to Marine Corps investigators and Marine Corps
16 personnel and stated that a diamond solitaire ring valued at
17 \$2,399.99 was fraudulently purchased by Plaintiff for 60% off
18 the regular price. Hanrahan purchased a diamond ring on the same
19 day and was given 60% off the regular price, prior to her death.

20 19. Plaintiff is informed and believes that all Defendants were
21 acting within the course and scope of their employment with
22 MCX/MCCS, Marine Corps of the United States Government.

23 20. The true names and capacities of the Defendants named
24 herein as Does 1 through 10, inclusive, whether individual,
25 corporate, associate, or otherwise are unknown to Plaintiff who
26 therefore sues such Defendants by fictitious names under
27 California Code of Civil Procedure § 474. Plaintiff is informed
28

1 and believes that Doe Defendants are California residents.
 2 Plaintiff will amend this Complaint to show such true names and
 3 capacities when they have been determined. Each Defendant was an
 4 agent of the other Defendants and ratified the conduct of the
 5 other Defendants.

6 21. Plaintiff appealed the suspension in a timely manner, but
 7 the appeal was never acknowledged. Plaintiff discussed the
 8 nonresponse with the EEO Counselor and the EEOC Counselor
 9 received the appeal in writing.

11 22. On January 17, 2006 Plaintiff called Terry White of the
 12 Corporate Human Resource office in Virginia to withdraw her
 13 retirement papers because she felt that it was wrong to be
 14 forced to retire against her will. Plaintiff explained to Ms.
 15 White she wanted to cancel the retirement. Ms. White said that
 16 the paper work was not yet received nor processed. She advised
 17 Delia to work with local Human Resource Department. Glo Emde and
 18 Bonita David to cancel her retirement. Plaintiff folloed the
 19 advice of ms. White. However, Defendants would not approve to
 20 withdraw her retirement.
 21
 22

23 II

24 FIRST CAUSE OF ACTION

25 Discrimination/AGE:

26 23. The allegations of paragraph 1-22 are re-alleged and
 27 incorporated herein by reference. This cause of action is
 28 pleaded against all Defendants.

24. Plaintiff was at all material times an employee for

1 MCX/MCCS for more than twenty nine years, and was protected
2 under the California Fair Employment and Housing Act (FEHA);
3 California Government Codes; in particular, Govt C §12941,
4 prohibiting age discrimination and Govt C §12940, prohibiting
5 National Origin discrimination in employment as well as the Age
6 Discrimination in Employment Act of 1967(ADEA). At all times
7 herein mentioned, all Government codes aforementioned were in
8 full force and effect and was binding on Defendants.
9

10
11 25. On December 20 2005, Plaintiff was age 53, and was
12 unlawfully placed on emergency suspension indefinitely by
13 Michael Thomas. Loss prevention completed the investigation and
14 concluded fraud against the Plaintiff. Shortly thereafter
15 Plaintiff was told to retire by Ms. Bowen, Ms. Emde and approved
16 by Bonita David.
17

18 26. At the time that Plaintiff was placed under suspension and
19 subsequently coerced to retire, she had been rated
20 "exceptionally reliable and trustworthy"; her work was wholly
21 satisfactory; and she was rated competent, and diligent in her
22 performance to the profit of Defendants. Plaintiff was
23 subjected to forced retirement by fear and intimidation of being
24 accused of misconduct and complete loss of retirement benefits.
25

26 27. Defendants concocted a conspiracy to accuse Plaintiff of
27 fraud for making an unauthorized purchase of a diamond solitaire
28 ring and was subjected to less favorable treatment because she,

1 over the age of 40. Defendants claim that Plaintiff was placed
2 on suspension indefinitely due to fraud, an alleged unauthorized
3 purchase of a diamond solitaire, when the ring she purchased
4 was not diamond solitaire. Defendants' claim that Plaintiff was
5 placed on suspension indefinitely due to fraud, was a pretext
6 designed to conceal Defendants' practice of discriminating
7 against Plaintiff on the basis of her age and National Origin.
8 Defendants had demonstrated a pattern of terminating employees
9 in certain groups, over 40.

10
11
12 28. Mr. Burhart approved the resignation/ retirement for the
13 Plaintiff.

14 29. Plaintiff believes and thereon alleges that her age was a
15 factor in the Agency's decision to place her under suspension
16 and coerce her to retire under intimidation, coercion and fear.
17 Agency placed plaintiff on suspension indefinitely following
18 false allegations of misconduct of fraud.
19

20 30. Agency's Human Resource employees, Ms. Bowen and Ms. Emde,
21 told Plaintiff to retire and subsequently refused to allow
22 Plaintiff to withdraw her retirement request more than three
23 weeks after the effective date of Plaintiff's resignation, even
24 though the Plaintiff's papers had not yet been processed nor
25 submitted to the corporate office in Virginia. Plaintiff was
26 treated less favorably than others similarly situated. Such
27 discrimination was in violation of California Govt C 12941 and
28

1 the ADEA and resulted in damage and injury to Plaintiff.
2 Plaintiff did not make an unauthorized purchase and committed no
3 fraud. Plaintiff purchased a ring which had been advertised
4 with a 60% discount and she did not buy a diamond solitaire.
5

6 31. Plaintiff had seen the ring in question advertised in a
7 MCX/MCCS flyer and asked Ms. Davis if she could purchase the
8 ring, which had a tag on it, that it was on sale for 60% off.
9 The ring which Plaintiff purchased had been advertised in a
10 flyer and did not look like other diamond solitaires advertised
11 in the MCX/MCCS flyer. The investigation was initiated because
12 of information provided to MCX/MCCS management by Ms. Kaspick, a
13 vendor from S&S Jewelry.
14

15 32. As a proximate result of Defendants' conduct, Plaintiff has
16 suffered and continues to suffer substantial losses in earnings
17 and other employment benefits; incurred losses in seeking and
18 performing substitute employment and losses she would have
19 received had Defendants not taken such adverse employment
20 actions against her.
21

22 33. As a proximate result of Defendants' conduct, Plaintiff has
23 suffered and continues to suffer embarrassment, anxiety,
24 humiliation, and emotional distress, all to her damage in amount
25 according to proof.
26

27 34. Defendants committed the acts alleged herein maliciously.
28 fraudulently, and oppressively, in bad faith, with the wrongful

1 intention of injuring Plaintiff, from an improper and evil
 2 motive amounting to malice, and in conscious disregard of
 3 Plaintiff's rights. Plaintiff thus is entitled to recover
 4 punitive damages from Defendants in an amount according to
 5 proof.
 6

7 35. As a result of Defendants' discriminatory acts as alleged
 8 herein, Plaintiff is entitled to reasonable attorney's fees and
 9 costs of suit as provided by United States and California
 10 Government Code.
 11

12 36. WHEREFORE, Plaintiff requests relief as hereinafter
 13 provided.
 14

15 III

16 SECOND CAUSE OF ACTION

17 DISCRIMINATION/ NATIONAL ORIGIN

18 37. The allegations or paragraphs 1 to 36 are re-alleged and
 19 incorporated by reference. This cause of action is pleaded
 20 against all Defendants.
 21

22 38. Plaintiff is Filipino. Some employees who were similarly
 23 situated have been investigated and allowed to remain employed
 24 during the investigation. There has been a pattern of
 25 humiliating, intimidating, chastisement and accusatory actions
 26 by Loss prevention personnel toward Filipino employees over
 27 forty. Mr. Thomas has subjected other similarly situated
 28 Filipinos, who have been questioned on an alleged misconduct, to
 humiliation, intimidation, chastisement and false accusations.
 Defendants sought to find reasons for getting Plaintiff to

1 resign and/or retire because she was older and Filipino. The
 2 reasons given by Defendants for Plaintiff's indefinitely
 3 suspension were pretext. Defendants failed to take reasonable
 4 steps to prevent the discrimination against Plaintiff from
 5 occurring, and to take immediate and appropriate corrective
 6 action to remedy the discrimination as described herein.

7 39. Agency has failed to follow their disciplinary procedure
 8 against Plaintiff such as issuing a formal warning, providing
 9 counseling, or imposing probation, or suspension.

10 40. WHEREFORE, Plaintiff requests relief as hereinafter
 11 provided.

12
 13 IV
 14 THIRD CAUSE OF ACTION
 15 [Defamation]

16 41. The allegations of paragraph 1-40 are re-alleged and
 17 incorporated herein by reference. This cause of action is pleaded
 18 against all Defendants.

19 42. By the acts described herein, Defendants caused to be
 20 published false and unprivileged communications tending directly
 21 to injure Plaintiff in her business and professional reputation.

22 43. On or about December 20, 2005 and continuing Plaintiff was
 23 indefinitely suspended and coerced to retire; defendants
 24 intentionally stated to persons in the company, as well as
 25 outside the company that Plaintiff had engaged in conduct which
 26 adversely reflected on her trade occupation. Defendants
 27 specifically communicated that Plaintiff had made an
 28 unauthorized purchase of a diamond ring as follows:

a. Ms. Szumonski stated to Mr. Quinonez of Loss prevention that

1 Plaintiff had approached her a few days before December 13, 2005
2 and asked whether the S&S ring would be 60% off. Ms. Szumonski
3 made a false statement to Loss Prevention when she said, "the
4 morning of the sale she told Plaintiff that the ring was not
5 included under the 60% discount sale."

6 b. Ms. Szumonski and Ms. Davis falsely stated, among others,
7 in particular to Mr. Ruben Quinonez and Michelle Albrecht, other
8 management personnel and Loss prevention personnel that the ring
9 in question was not included in the 60% sale.

10 c. Ms. Davis falsely stated that she sold the ring to
11 Plaintiff because Plaintiff had said, "Remy Songco said the
12 ring was included in 60% discount." Plaintiff had requested to
13 buy the ring, advertised in a MCX/MCCS flyer with a 60% discount
14 from the Sales Associate Ms. Davis. Plaintiff did not tell
15 anyone that Ms. Songco had said the diamond was not included in
16 the 60% discount sale. Ms. Davis and Ms. Kaspick, and Ms.
17 Szumonski made false statements to management and other
18 employees that that Plaintiff said to Ms. Davis that, "Ms.
19 Songco had approved the 60% sale price of the ring."

20 d. Ms. Davis signed a false statement prepared by Loss
21 Prevention (Mr. Quinonez) that Plaintiff had said Remy Songco
22 had approved the 60% discount, knowing that this was something
23 the MCX/MCCS Retail managers did not do and were not authorized
24 to do. Ms. Davis has stated that after the initial interview Mr.
25 Quinonez to sign a written statement outlining what was
26 discussed. "I was not comfortable signing anything until after I
27
28

1 received counsel from my attorney. After speaking with my
2 attorney I returned and agreed to sign the statement.

3 e. Ms. Davis falsely stated to Mr. Quinonez on December 19,
4 2005 that she had told the Plaintiff she was not sure the S&S
5 ring was on sale, but that after the Plaintiff, "told her she
6 asked Remy and Remy said it was included." Ms. Davis falsely
7 stated to Ms. Hanrahan she was intimidated by the Plaintiff into
8 selling the S&S ring at the authorized 60% discount.

9 f. Ms. Davis stated in her deposition that S&S pretags all
10 their jewelry and that when they're in the showcase, they have
11 tags and that is the correct sale price for that day. Ms. Davis
12 stated, among others, that the management or manager of S&S
13 would decide which item is going to be placed on the brochure;
14 and that Remy Songco did not have authority to give a certain
15 discount to S&S jewelry pieces. Ms. Davis stated that each piece
16 of jewelry that is being sold by S&S was always tagged with the
17 correct price and that the price was there on the ring. Ms.
18 Davis knew the price (60% discount was on the ring.

19 g. On December 14, 2005 Ms. Ottobre forwarded Ms. Hanrahan's
20 email to the MCX/MCCS Human Resources Office adding that she
21 told Plaintiff the ring was not included in the sale.

22 h. Ms. Kaspick stated to management and other personnel that
23 Plaintiff had made an unauthorized purchase of the diamond ring,
24 when she knew full well that the diamond ring was tagged at a
25 60% discount. Ms. Kaspick further falsely reported to management
26 that Ms. Szumonski, the jewelry supervisor, had previously told
27 Plaintiff that the ring would not be included in the 60% sale.
28

1 i. Mr. Thomas, Mr. Flanagan and Mr. Quinonez conspired among
2 themselves to obtain false allegation from witnesses.

3 j. Ms. Songco falsely stated to management and to Human
4 Resources that she had told Plaintiff that the diamond ring was
5 not included in the 60% sale.

6 k. On December 13, 2007 Ms. Hanrahan sent her supervisor,
7 Suzanne Ottobre an email reporting false information provided to
8 her by Zenaida Kaspick.

9 44. Plaintiff is further informed and believes that at the
10 time of her suspension and coerced resignation/retirement,
11 managers intentionally told Human Resources that Plaintiff had
12 engaged in misconduct and made false statements an unauthorized
13 statements in the purchase of a diamond ring. This information
14 implied that Plaintiff was a liar, an incompetent and an
15 untrustworthy employee.
16

17 45. The information provided to Human Resources and others was
18 false, and management and sales Associates knew it to be false
19 at the time they were made. In fact, Plaintiff had not engaged
20 in misconduct and was at all material times a competent and
21 trustworthy employee.

22 46. Plaintiff is informed and believes that at all times herein
23 Agency management ratified and republished the above-described
24 statements with knowledge that they were false.

25 47. The defamatory statements set forth above in paragraph 43,
26 were ratified and republished to other employees and others to
27 force Plaintiff to resign and/or retire and to obtain the favor
28

1 of management. Defendants published these statements with malice
 2 express and implied malice with the design and intent to injure
 3 Plaintiff in her good name, reputation and employment.
 4

5 48. As a proximate result of the defamatory statements made by
 6 all defendants have caused Plaintiff has suffered injury to her
 7 business and professional reputation, and further has suffered
 8 and continues to suffer embarrassment, humiliation, and anguish
 9 all to her damage in an amount according to proof.
 10

11 49. Defendants committed the acts alleged herein maliciously,
 12 fraudulently, oppressively, with the wrongful intention of
 13 injuring Plaintiff, from an improper and evil motive amounting
 14 to malice, and in conscious disregard of Plaintiff's rights.
 15 Plaintiff is entitled to recover punitive damages from
 16 Defendants and each of them in an amount according to proof.
 17

18 50. WHEREFORE. Plaintiff prays for damages as hereinafter
 19 provided.
 20

21 V

22 FOURTH CAUSE OF ACTION CAUSE OF ACTION

23 [FRAUD: Concealment and Intentional Misrepresentation]

24 51. Plaintiff reallege and incorporate herein Paragraphs 1-50
 25 as though fully set forth herein.
 26

27 52. On or about December 20, 2005 and continuing, Defendants,
 28 and each of them, concealed and suppressed material facts which
 should have been disclosed when Defendants told management that
 Plaintiff had made an unauthorized purchase of a diamond ring.

53. On or about December, 2005, and continuing all Defendants prevented Plaintiff from discovering the concealed or suppressed facts that the diamond ring was included in the 60% sale. Management failed to disclose information with respect to the fact that the diamond ring in question had been pre-tagged with a discount of 60% and placed in the showcase by S&S and Ms. Kaspick. Also the ring in question is not a diamond solitaire but rather it was a cluster ring.

54. Defendants and each of them concealed or suppressed these facts with the intent to defraud and induce Plaintiff to resign and or retire and to obtain favor from the Agency management. At the time that Plaintiff acted, Plaintiff was unaware of these concealed or suppressed facts and would not have taken the action if Plaintiff had known the facts.

55. On or about December 20, 2005 and continuing Managers made false statements and or facilitated the transfer of false statements and lies, among others, as follows:

a. Ms. Szumonski stated to Mr. Quinonez of Loss prevention that Plaintiff had approached her a few days before December 13, 2005 and asked whether the S&S ring would be 60% off. Ms. Szumonski made a false statement to Loss Prevention when she said, "the morning of the sale she told Plaintiff that the ring was not included under the 60% discount sale."

b. Ms. Szumonski and Ms. Davis falsely stated, among others, in particular to Mr. Ruben Quinonez and Michelle Albrecht, other management personnel and Loss prevention personnel that the ring in questioned was not included in the 60% sale.

c. Ms. Davis falsely stated that she sold the ring to

1 Plaintiff because Plaintiff had said, "Remy Songco said the
2 ring was included in 60% discount." Plaintiff had requested to
3 buy the ring, advertised in a MCX/MCCS flyer with a 60% discount
4 from the Sales Associate Ms. Davis. Plaintiff did not tell
5 anyone that Ms. Songco had said the diamond was not included in
6 the 60% discount sale. Ms. Davis and Ms. Kaspick, and Ms.
7 Szumonski made false statements to management and other
8 employees that that Plaintiff said to Ms. Davis that, " Ms.
9 Songco had approved the 60% sale price of the ring."
10

11
12 d. Ms. Davis signed a false statement prepared by Loss
13 Prevention (Mr. Quinonez) that Plaintiff had said Remy Songco
14 had approved the 60% discount, knowing that this was something
15 the MCX/MCCS Retail managers did not do and were not authorized
16 to do. Ms. Davis has stated that after the initial interview Mr.
17 Quinonez to sign a written statement outlining what was
18 discussed. "I was not comfortable signing anything until after I
19 received counsel from my attorney. After speaking with my
20 attorney I returned and agreed to sign the statement.

21 e. Ms. Davis falsely stated to Mr. Quinonez on December 19,
22 2005 that she had told the Plaintiff she was not sure the S&S
23 ring was on sale, but that after the Plaintiff, "told her she
24 asked Remy and Remy said it was included." Ms. Davis falsely
25 stated to Ms. Hanrahan she was intimidated by the Plaintiff into
26 selling the S&S ring at the authorized 60% discount.

27 f. Ms. Davis stated in her deposition that S&S pretags all
28 their jewelry and that when they're in the showcase, they have

1 tags and that is the correct sale price for that day. Ms. Davis
2 stated, among others, that the management or manager of S&S
3 would decide which item is going to be placed on the brochure;
4 and that Remy Songco did not have authority to give a certain
5 discount to S&S jewelry pieces. Ms. Davis stated that each piece
6 of jewelry that is being sold by S&S was always tagged with the
7 correct price and that the price was there on the ring. Ms.
8 Davis knew the price (60% discount was on the ring.

9 g. On December 14, 2005 Ms. Ottobre forwarded Ms. Hanrahan's
10 email to the MCX/MCCS Human Resources Office adding that she
11 told Plaintiff the ring was not included in the sale.

12 h. Ms. Kaspick stated to management and other personnel that
13 Plaintiff had made an unauthorized purchase of the diamond ring,
14 when she knew full well that the diamond ring was tagged at a
15 60% discount. Ms. Kaspick further falsely reported to management
16 that Ms. Szumonski, the jewelry supervisor, had previously told
17 Plaintiff that the ring would not be included in the 60% sale.

18 i. Mr. Thomas, Mr. Flanagan and Mr. Quinonez conspired among
19 themselves to obtain false allegation from witnesses.

20 j. Ms. Songco falsely stated to management and to Human
21 Resources that she had told Plaintiff that the diamond ring was
22 not included in the 60% sale.

23 k. On December 13, 2007 Ms. Hanrahan sent her supervisor,
24 Suzanne Ottobre an email reporting false information provided to
25 her by Zenaida Kaspick.
26
27
28

1 56. The Statements made by the Defendants as stated, supra in
2 paragraphs (55 a-k) were in fact untrue. The true facts were as
3 follows:

4 On December 13, 2005, Plaintiff purchased a diamond cluster ring
5 advertised in the MCX/MCCS flyer, displayed in the showcase and
6 pre-tagged by S&S/Ms. Kaspick at 60% discount from Ms. Davis
7 during her lunch hour. When she (Plaintiff) returned from lunch
8 her supervisor, ms. Remy Songco called her in her office and
9 asked her what she had purchased and she told her and showed her
10 the jewelry. Shortly thereafter, Ms. Hanrahan and Ms. Kaspick
11 came into the room and told her that the ring was not on sale at
12 60% off. When Plaintiff heard this she (Plaintiff) returned the
13 ring immediately. The following Monday, Plaintiff was called and
14 was escorted by Ruben Quinonez to Mr. Thomas office in another
15 building. There she was grilled, questioned, intimidated,
16 harassed, forced to admit that she defrauded the store. Mr.
17 Thomas banging on the desk forcefully in front on Glo Emde and
18 Mr. Quinonez. The mistreatment continued for more than three
19 hours. When Plaintiff refused to admit to the fraud, Mr. Thomas
20 told her that she was suspended indefinitely without pay and was
21 escorted out of the building and military base like she was a
22 dangerous criminal.

23 57. Defendants had misrepresented or concealed that certain
24 facts herein as described in the paragraphs 55 and others above
25 with the malicious intention of depriving Plaintiff of her money
26 and property, thereby justifying an award of punitive damages.

27 WHEREFORE Plaintiff prays for damages as hereinafter provided.
28

VI

FIFTH CAUSE OF ACTION
[CONSPIRACY WITH INTENT DEFRAUD]

58. Plaintiffs reallege and incorporate herein Paragraphs 1-58. as though fully set forth herein.

59. As alleged above, on or about December 19, 2005, and continuing to the present time; Defendants agreed and knowingly conspired between themselves to defraud Plaintiff.

Under this conspiracy, Defendants agreed to have Plaintiff falsely accuse the Plaintiff of purchasing a diamond solitaire ring in an unauthorized manner, by concocting false allegations and procuring false statements from witnesses. Defendants further agreed to coerce Plaintiff to resign and retire by placing her in fear and intimidation of being accused of a crime.

60. Defendants did the acts and made the statements as herein alleged pursuant to, and in furtherance of, the conspiracy and agreement alleged above.

61. At all times Defendants knew Plaintiffs had purchased a ring lawfully and that it had been advertised in the MCX/MCCS flyer at a 60% discount. Defendants knew that Plaintiff had not made certain alleged false statements in the purchase of the ring.

62. As a result of the conspiracy between the defendants Plaintiff has been suffered injured to her reputation, embarrassment, humiliation, financial an emotional stress.

63. WHEREFORE, Plaintiff prays judgment against Defendants as follows:

1. For compensatory damages
2. For general damages according to proof at trial;
3. For special damages according to proof at trial;
4. For exemplary or punitive damages for the Fraud Conspiracy to Defraud and defamation.
5. For cost of suit herein incurred.

VII

PRAYER FOR RELIEF

64. WHEREFORE, Plaintiff request relief as follows:

- (1). For special and economic damages, including back pay and front pay, for all cause of action;
- (2). For general damages and non-economic damages;
- (3). For punitive damages according to proof ;
- (4). For an award of interest, including prejudgment interest at the prevailing legal rate;
- (5). For cost of the suit, including reasonable attorney fees required by statutes;
- (6). For mental and emotional distress damages;
- (7). For compensatory damages, including lost wages, lost employee benefits, bonuses, vacation benefits, and other special and general damages according to proof; and
- (8). For such other and further relief as the Court may deem proper.

Date

7/21/08

LAW OFFICE OF BONITA P. MARTINEZ

BY: Bonita P. Martinez

Bonita P. Martinez, Esq.
 Attorney for Plaintiff,
 Delia V. Opinion

JURY DEMAND

Plaintiff demands trial by jury in this action.